

Application Serial No.: 10/632,003  
Attorney Docket No.: 0260256

### **REMARKS**

This is in response to the *Non-Final* Office Action of June 8, 2010, where the Examiner has rejected claims 48-73. By the present amendment, applicant has amended claims 48, 50, 52-58, 60-65, 67 and 69-73, and cancelled claims 51, 59 and 68. After the present amendment, claims 48-50, 52-58, 60-67 and 69-73 will be pending in the present application. In view of the following remarks, applicant respectfully requests an early notice of allowance for claims 48-50, 52-58, 60-67 and 69-73.

**A. Rejection of Claims 48-73 under 35 USC § 112, ¶ 1**

The Examiner has rejected claims 48-73, under 35 USC § 112, ¶ 1, as failing to comply with the written description requirement. The Examiner states that the written specification discloses that “assets” are delivered and “not one asset of the first media asset.” Applicant respectfully disagrees; however, in order to expedite the prosecution of the present application, applicant has amended the claims to replace “first media asset” with “media assets.” Accordingly, it is respectfully submitted that rejection of claims 48-73, under 35 USC § 112, ¶ 1, has been rendered moot.

**B. Rejection of Claims 50, 52-56, 58, 60-64, 67, 69-73 under 35 USC § 112, ¶ 1**

The Examiner has rejected claims 50, 52-56, 58, 60-64, 67 and 69-73, under 35 USC § 112, ¶ 1, as failing to comply with the written description requirement. Applicant respectfully disagrees; however, in order to expedite the prosecution of the present application, applicant has amended claims 50, 52-56, 58, 60-64, 67 and 69-73 to remove “download timing” and recite

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“wherein the one or more constraints include ....” Applicant respectfully directs the Examiner’s attention to the following disclosure in the written description that shows one or more constraints are used for receiving the delivery of the asset at the user device, periodically. Applicant respectfully submits that the word “periodically” in the written description indicates that receiving the delivery is during periods that the one or more constraints is met.

[0050] A continuous, uninterrupted, and substantially seamless display (visual and auditory) of media content, by efficient delivery of the media assets is provided to users. Specifically, **assets are delivered to a user device, periodically, when specific constraints are met (e.g., network bandwidth availability, user device memory, assured QOS, etc.)** By integrating these assets with a viewing means (e.g., a web-browser), the user is provided an uninterrupted and continuous stream of media content that does not require real-time buffering.

[0057] The client manages the download of assets based on predetermined constraints. As has been mentioned thus far, predetermined constraints include, for example, network bandwidth availability, user device memory, time of day, and assured quality of service. For instance, in one implementation of the client, downloads only occur when the user device is idle. In another implementation, the client process downloads only when network activity is below a certain level. In another instance, the client process measures the CPU and memory usage on the user device, and the predetermined constraint is met when usage is below certain performance levels. In yet another instance the client process manages the downloading of assets based on the time of day, and statistically when network usage is lowest. The client process can of course, additionally utilize any combination of constraints to manage the download of assets.

Therefore, as explained in the written description, assets are delivered to a user device, *periodically*, when specific constraints are met, and in some embodiments, downloads occur *only when* one or more such constraints are met. Therefore, applicant submits that claims 50, 52-56, 58, 60-64, 67 and 69-73, as amended, are in compliance with under 35 USC § 112, ¶ 1.

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C. Rejection of Claims 48-51, 54, 56-59, 62, 64-68, 71 and 73 under 35 USC § 103(a)

The Examiner has rejected claims 48-51, 54, 56-59, 62, 64-68, 71 and 73, under 35 USC § 103(a), as being unpatentable over Needham, et al. (U.S. Pub. No. 2003/0177495) ("Needham") in view of Arsenault, et al. (U.S. Pat. No. 6,701,528) ("Arsenault").

The Office Action asserts that Needham discloses various elements of claim 48, except that "Needham is silent as to receiving an asset list, including information about a plurality of media assets, over the network; storing the asset list, including the information about the plurality of media assets, in a memory, and that the asset is periodically received." (Page 6 of Office Action.) The Office Action goes on to state that Arsenault discloses these missing elements in Needham. Applicant respectfully disagrees.

First, applicant respectfully submits that claim 48, as amended, recites "downloading the media assets to the user device, periodically, only when one or more constraints, managed by the user device, are met, wherein the one or more constraints include at least one of a usage level of the user device, a usage level of the network and a service quality level of the network." It is respectfully submitted that, in Needham, the downloading is not managed by the user device, but the selection is made through the EPG by selecting a program, and the network sends the selected information to the user device at the time such request is made or a time specified by the user. Rather, according to claim 48, the user device manages the downloading and determines when one or more constraints are met. Also, the downloading occurs, periodically, only when one or more constraints are met. In addition, claim 48 provides that the one or more constraints include at least one of a usage level of the user device, a usage level of the network

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and a service quality level of the network. It is respectfully submitted that Needham fails to disclose, teach or suggest these limitations, and Needham merely specifies a time to the network for communicating the content to the user device at that specific time.

Even more, the Office Action states that Arsenault discloses that the media assets are delivered to the user device, periodically, based on the following disclosure in Arsenault:

FIG. 6 is a diagram illustrating the transmission of a video program to provide near video on demand (NVOD service). NVOD service is accomplished by broadcasting the same video program 602 on a plurality of program channels with each channel temporally separated by a rebroadcast interval 604. As shown in FIG. 6, the video program can be broadcast at 5:00 on channel (using the appropriate SCID), 5:30 on channel 2, 6:30 on channel 3, and so on. Using this broadcast technique, the video program can be viewed from the beginning to the end, without requiring the user to wait for more than 30 minutes (hence, providing near video on demand). As shown in FIG. 6, this means that at any particular time, during an time interval 606, different time segments of the video program 60SA-60SE (hereinafter referred to collectively as segments 60S) are broadcast in parallel, and can be received by the receiver 200.

It is respectfully submitted that Arsenault is describing a real-time video on demand, where the same video program is broadcast on a number of channels every thirty minutes. However, Needham describes recording a program for a later viewing. Therefore, it is respectfully submitted that Arsenault teaches away from combining the teachings of Needham and Arsenault. There is no motivation or desire for one of ordinary skill in the art to modify Needham to transmit the same video program a number of times for recording on the user device. Even yet, claim 48, as amended, recites "downloading the media assets to the user device, periodically, only when one or more constraints, managed by the user device, are met ...." It is respectfully submitted that there is no link between the multi-transmission of the same video program by Arsenault and a requirement to make transmissions only when one or more

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constraints are met. Of course, Arsenault does not suggest such a link, and Needham has no desire for multiple transmissions of the same video content (which is still different than transmission of media assets periodically only when constraints are met). Applicant further respectfully submits that, as described in the present application, the invention of claim 48 is aimed at avoiding and eliminating the shortcomings of real-time video buffering and displaying. In contrast, Arsenault is describing a method of real-time viewing of a program for video on demand. It is respectfully submitted that teachings of Arsenault is opposite to the invention of claim 48, and also the general teaching of Needham, which are related to viewing of a recorded program, rather than a real-time viewing of a program.

Accordingly, applicant respectfully submits that claim 48, as amended, is patentably distinguishable over Needham in view of Arsenault, and should be allowed. Further, claims 57 and 65 has been amended to include limitations similar to those of claim 48, as amended, and should be allowed for the same reasons. Also, claims 48-51, 54, 56, 58-59, 62, 64, 66-68, 71 and 73 depend from claims 48, 57 and 65, respectively, and should be allowed at least for the same reasons.

**D. Rejection of Claims 52, 60 and 69 under 35 USC § 103(a)**

The Examiner has rejected claims 52, 60 and 69, under 35 USC § 103(a), as being unpatentable over Needham in view of Arsenault, and further in view of Son, et al. (U.S. Pat. No. 7,159,235) ("Son").

It is respectfully submitted that claims 52, 60 and 69 depend from claims 48, 57 and 65, respectively, and should be allowed at least for the same reasons.

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**E. Rejection of Claims 53, 61 and 70 under 35 USC § 103(a)**

The Examiner has rejected claims 53, 61 and 70, under 35 USC § 103(a), as being unpatentable over Needham in view of Arsenault, and further in view of Nawaz, et al. (U.S. Pat. No. 5,959,621) ("Nawaz").

It is respectfully submitted that claims 53, 61 and 70 depend from claims 48, 57 and 65, respectively, and should be allowed at least for the same reasons.

**F. Rejection of Claims 55, 63 and 72 under 35 USC § 103(a)**

The Examiner has rejected claims 55, 63 and 72, under 35 USC § 103(a), as being unpatentable over Needham in view of Arsenault, and further in view of Ueda (U.S. Pat. No. 5,815,194) ("Ueda").

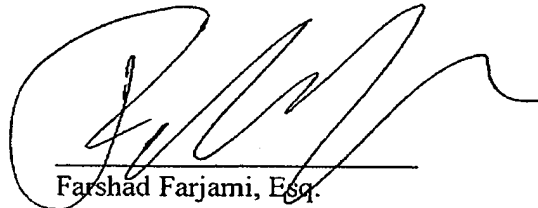
It is respectfully submitted that claims 55, 63 and 72 depend from claims 48, 57 and 65, respectively, and should be allowed at least for the same reasons.

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**G. Conclusion**

Based on the foregoing reasons, an early Notice of Allowance directed to all claims 48-50, 52-58, 60-67 and 69-73 pending in the present application is respectfully requested.

Respectfully Submitted,  
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